

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6637
PETITION OF ALAN QUILLIAN AND ERIK SASS**

OPINION OF THE BOARD
(Hearing Held: November 6, 2019)
(Effective Date of Opinion: November 21, 2019)

Case No. A-6637 is an application by Alan Quillian and Erik Sass (the "Petitioners") for a variance of 3.67 feet from the front lot line setback, needed for the proposed construction of a front addition. The required setback is fifty (50) feet, in accordance with Section 59-4.4.6.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, November 6, 2019. Petitioner Alan Quillian appeared at the hearing in support of the variance application, assisted by architect Michael Merschat, AIA.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 2, Block G, Section 2 Springbrook Forest Subdivision, located at 312 Stonington Road, Silver Spring, Maryland, 20902, in the RE-1 Zone. It is a four-sided lot with an angled rear lot line, approximately 41,778 square feet in size. The property slopes down towards the rear lot line and a stream. See Exhibits 3(a) and 10.

2. The Justification Statement ("Statement") indicates that the subject property was originally platted in 1946, and has been rezoned a number of times. The Statement indicates that the existing dwelling was constructed between 1981 and 1983, during which time the property was zoned R-200. The Statement states that the existing dwelling was approved as having met the setbacks for the R-200 Zone, and that if the property were still zoned R-200, no variance would be needed for the proposed construction. It notes that the front setback at the time of construction was 40 feet. The Statement indicates that the property was rezoned to the RE-1 Zone in the late 1990s, and that because the RE-1 Zone requires a front setback of 50 feet, in its current configuration, the existing house projects into the required front setback approximately 10'-4", making it nonconforming.

3. The Statement indicates that the Petitioners are seeking variance relief to allow the construction of “two, front-facing dormer additions (25.5 SF each) and one breakfast room addition (54 SF). . . .” It states that the additions “will be located within the required front yard [setback] and will only project 3’-8” into the required front yard setback and do not project as far into the front setback as the existing structure 10’-4” +/-.” The Statement thus concludes that the “locations of the proposed additions to the structure do not increase the non-conformity nor do they project into the setback as far as the existing non-conformity,” noting that the proposed dormer additions “fall within the existing, non-conforming footprint of the house,” and that the “single-story volume of the breakfast room addition remains smaller than the 3-story portion of the dwelling and does not project past the face of the single story volume that houses the garage.” See Exhibit 3(a).

4. The record contains letter of support for the grant of the variance from Petitioners’ neighbors on both sides, to the rear, and across the street. See Exhibits 7(a)–(d).

5. At the hearing, Mr. Merschatt testified that in 1981, when the house was constructed, it was in the R-200 Zone and met the required setbacks. He testified that when the zoning was changed to RE-1, the house no longer conformed with the setbacks, and that the proposed dormers and breakfast room addition will sit in the front yard setback despite the fact that they do not extend any closer towards the front lot line than the existing home.

Mr. Merschatt testified that the property slopes downward about 30 feet from front to rear, with a relatively level front yard, a drop of about nine (9) feet from the front to the rear of the house, and then a substantial drop in the rear. See Exhibit 11(f). He testified that if the house had been sited ten (10) feet farther from the front lot line, it would have required a lot of cut and fill.

6. Mr. Quillian testified that he and Mr. Sass have owned the property for about three (3) years.

FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement and the testimony of Mr. Merschatt, that the proposed development uses an existing legal nonconforming structure, the existing house, which was built in accordance with the setbacks imposed by the then-applicable

R-200 Zone, but does not conform with the front lot line setback of the property's current RE-1 Zone. Accordingly, the Board finds that the application satisfies this element of the variance test.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the existing house was built in the early 1980s, prior to the Petitioners' ownership of the property. Thus the Board finds that the Petitioners took no actions to create the special circumstances or conditions peculiar to this property.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

As noted above, the existing house is nonconforming, encroaching approximately 10'-4" into the front lot line setback imposed by the standards of the RE-1 Zone. The Board finds that the Petitioners cannot construct the proposed dormers, which the Board notes are within the footprint of the existing home, or undertake the proposed construction of a modest (54 SF) breakfast room addition, without the grant of the requested variance, causing the Petitioners a practical difficulty. The Board further finds that the encroachment into the front lot line setback that would be created by the proposed construction would be less than four feet, whereas the existing house already encroaches approximately ten feet into that setback. In addition, the Board notes, based on the testimony of Mr. Merschatt, that the location of the existing house was chosen to avoid the sloping rear portion of this property and the necessity for cut and fill. Accordingly, the Board concludes that the grant of the requested variance is the minimum necessary to allow the proposed construction and therefore to overcome the practical difficulties that full compliance with the Zoning Ordinance would impose.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that granting the variance to allow the Petitioners to proceed with the proposed construction will continue the residential use of the property and will not substantially impair the intent and integrity of the Kemp Mill Master Plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the record contains no opposition to the proposed construction which, as noted above, would continue the residential use of this home. The Board further finds that the record contains letters of support from four neighbors, including the abutting neighbors on both sides and to the rear, and the neighbors across the street. In addition, the Board notes that the proposed construction will not bring the house any closer to the street than it already is. Thus the Board finds that granting the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with the plans of record.

Therefore, based upon the foregoing, on a motion by Katherine Freeman, seconded by Bruce Goldensohn, Vice Chair, with John H. Pentecost, Chair, Jon W. Cook, and Mary Gonzales in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of November, 2019.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.